

# SENATE RECORD VOTE ANALYSIS

104th Congress  
1st Session

**Vote No. 115**

March 23, 1995, 9:08 p.m.  
Page S-4484 Temp. Record

## LINE-ITEM VETO/Final Passage

**SUBJECT:** Legislative Line Item Veto Act of 1995 . . . S. 4. Final Passage, as amended.

**ACTION: BILL PASSED, 69-29**

**SYNOPSIS:** Pertinent votes on this legislation include Nos. 109-114.

As amended and passed, S. 4, the Legislative Line Item Veto Act of 1995, will mandate the separate enrollment of line items: in all spending bills; all bills containing new or expanded direct spending programs; and all bills containing targeted tax benefits. The bill will sunset on September 30, 2000. Details are provided below.

Enrollment process:

- upon passage of both Houses in identical form, a bill subject to this Act will be sent to the Clerk of the House or to the Secretary of the Senate, depending upon the House of origin for the bill, for disaggregation;
- each separately enrolled item from a bill will be assigned a new bill number; and
- those new bills will then be considered en bloc by each House under a time limit of 1 hour; amendments and motions to reconsider will not be in order and motions to further limit debate will not be debatable.

Appropriations bills:

- appropriations bills will contain the same level of detail on the allocation of funds as in their committee reports;
- "items" in an appropriations bill will mean any numbered section, unnumbered paragraph, or any allocation or suballocation of funds contained in a numbered or unnumbered paragraph, except as indicated below;
- rescissions or cancellation of existing budget authority will not be considered items for separate enrollment; and
- fences and other limitations or conditions on appropriations will not be separated from the funding items to which they are attached or otherwise disaggregated.

Tax legislation:

- targeted tax benefits will be reported as separate items, with the details contained in the committee report; and
- a targeted tax benefit will be defined as any provision estimated by the Joint Committee on Taxation as losing revenue in the

(See other side)

YEAS (69)			NAYS (29)		NOT VOTING (2)	
Republicans (50 or 96%)	Democrats (19 or 41%)		Republicans (2 or 4%)	Democrats (27 or 59%)	Republicans (2)	Democrats (0)
Abraham	Hutchison	Biden	Hatfield	Akaka	Gramm- <sup>2</sup>	
Ashcroft	Inhofe	Bradley	Jeffords	Baucus	Stevens- <sup>1</sup>	
Bennett	Kassebaum	Breaux		Bingaman		
Bond	Kempthorne	Daschle		Boxer		
Brown	Kyl	Dorgan		Bryan		
Burns	Lott	Exon		Bumpers		
Campbell	Lugar	Feingold		Byrd		
Chafee	Mack	Feinstein		Conrad		
Coats	McCain	Ford		Dodd		
Cochran	McConnell	Graham		Glenn		
Cohen	Murkowski	Harkin		Inouye		
Coverdell	Nickles	Heflin		Johnston		
Craig	Packwood	Hollings		Kerrey		
D'Amato	Pressler	Kennedy		Lautenberg		
DeWine	Roth	Kerry		Leahy		
Dole	Santorum	Kohl		Levin		
Domenici	Shelby	Lieberman		Mikulski		
Faircloth	Simpson	Robb		Moseley-Braun		
Frist	Smith	Wellstone		Moynihan		
Gorton	Snowe			Murray		
Grams	Specter			Nunn		
Grassley	Thomas			Pell		
Gregg	Thompson			Pryor		
Hatch	Thurmond			Reid		
Helms	Warner			Rockefeller		
				Sarbanes		
				Simon		

### EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

### SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

first fiscal year, the first 5 fiscal years, or the subsequent 5 fiscal years covered by the most recently adopted concurrent budget resolution and having the effect of providing more favorable tax treatment to a particular taxpayer, or limited group of taxpayers, when compared with other similarly situated taxpayers (see vote No. 109 for related debate).

Direct spending:

- authorizing committees will report new direct spending provisions as separate items, with the details contained in the committee reports.

Point of order:

- a three-fifths majority (60) vote point of order will lie in the Senate against the consideration of any appropriations, tax, or direct spending bill that does not meet the above requirements.

Veto:

- The President will be able to veto any of the line-item bills just as he may veto any other bill, and Congress will be able to override his veto with two-thirds majority votes, just as they may override his veto of any other bill.

Miscellaneous:

- any Member of Congress will have standing to bring an action for declaratory judgment and injunctive relief on the claim that any provision of this Act violates the Constitution; any such action will be decided by a three-judge panel and that decision will be directly appealable to the Supreme Court;

- appropriations and direct spending for non-emergency items will not be in order on emergency appropriations bills;
- vetoes of appropriations (that are not overridden) will be matched by commensurate reductions in the discretionary spending caps under the Budget Act (to ensure that savings from discretionary spending cuts are used to reduce the deficit instead of spent);

- vetoes of direct spending and targeted tax benefits (that are not overridden) will be matched by commensurate reductions in the balances for the budget year and each outyear under the Balanced Budget and Emergency Deficit Control Act (to ensure that savings from reducing tax expenditures or direct spending are used to reduce the deficit instead of to pay for new tax expenditures or direct spending);

- the President will submit legislation for the periodic review, reauthorization, and sunset of existing tax expenditures with his fiscal year 1997 budget;

- the Executive Branch will conduct periodic performance reviews of tax expenditures; and

- it will be out of order in Congress to consider a new tax expenditure without providing for a sunset within 10 years of its enactment.

**Those favoring** final passage contended:

Passage of this bill will restore the balance of power between the Executive Branch and the Legislative Branch by giving the President line-item veto authority. The President will be given a useful tool for eliminating wasteful spending and Congress will consequently avoid slipping unjustifiable, special interest items into large spending bills. Historically, we know that allowing the President to restrict spending for individual items has worked; we also know from States' experiences that it still works today. This bill is comprehensive; it will apply to all new spending items--appropriations, new entitlements, and targeted tax expenditures. Those items will be separately enrolled and thus each will be subject to a veto. Some Senators have stated that they support the line-item veto as a concept, but that they have objections to this particular formulation. None of their objections has merit. After years of debate and hearings on the line-item veto, and after a week of debate on this particular bill, we are confident that we have a strong, workable, and bipartisan bill.

S. 4 will restore the original intent of our Founding Fathers in granting the President the power to veto bills and resolutions. In the early years of our Republic, appropriations bills ran only a few pages, and all the spending details were included in those pages. Committee reports with hundreds of detailed line items did not exist. The power to veto a bill was for all practical purposes the same as the right to veto individual line items, because bills were essentially line-item bills. As government grew, bills became larger, and the value of the veto declined because it is difficult for a President to veto a large bill containing worthwhile items solely because of a few objectionable features.

However, President's possessed a similar check to wasteful spending that was widely used until recently. That check, impoundment authority, was exercised by virtually all Presidents as a matter of routine administrative discretion until 1974, when Congress outlawed it as part of the Budget Act. For example, Thomas Jefferson refused to spend \$50,000 that Congress had appropriated to purchase gunboats, President Grant impounded funds for public works projects that he thought were unjustified, and President Johnson impounded funds to reduce inflation.

The practice of passing large, omnibus bills with porkbarrel riders first became commonplace after the Civil War. This practice increased the use of impoundment authority, which created controversy because the right to impound funds was only implicit. The question was never decided in court, but complaints from Members were common. Not all Members complained at the impoundment of excessive spending; some Members argued instead for the restoration of original congressional intent by giving the President line-item veto authority. Such legislative proposals have been a constant in Congress since the Civil War.

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Starting with the New Deal, and expanding rapidly in the 1960s, the perception of the proper scope of Government activities increased tremendously. Presidential impoundment of funds had a commensurate increase. President Nixon exercised the power the most freely, impounding between 17 percent and 20 percent of controllable funds. This frequent use was seen as abuse by a liberal Congress anxious to spend more money, and, when the Presidency was weakened by Watergate, Congress used the opportunity to take away this power from the President when it passed the Budget Act in 1974. In its place Congress gave the "power" to propose recessions.

Not uncoincidentally, deficit spending exploded after this congressional action. From passage of the Budget Act to the present Presidents have requested 1,084 rescissions totalling \$72.8 billion. Congress has approved 399 of those requests totalling \$22.9 billion. Most requests have been simply ignored. Wasteful spending on items that served no national interest but which were of parochial interest to Members skyrocketed because Members knew that without line-item veto or impoundment authority the President had little ability to stop it. He could either accept a bill trimmed with wasteful fat or veto it. When porkbarrel spending has been attached to must-pass legislation, such as continuing funding resolutions or emergency aid bills, Presidents understandably have not exercised their veto authority to remove it. Porkbarrel spending has not been the major cause of the escalating deficits that have been run since 1974, but it has been a significant contributing factor. Passing this line-item veto bill, which will more than serve as a substitute for the impoundment authority that was seized by Congress, will give the President a useful tool for stopping expenditures that are not in the national interest. Since the removal of impoundment authority in 1974, and the resulting loss of spending restraint, the calls for the restoration of original intent by giving the President the power to veto spending line items have increased tremendously.

Though the Federal Government has so far failed to act, 43 States have adopted some form of the line-item veto; many of those States have had the line-item veto for 100 years or more. The States have found that it works. A recent Cato Institute survey of 118 former and current Governors found that 69 percent of them had found that having a line-item veto of individual spending items was "a very useful tool" in balancing their State budgets, and 23 percent had found that it was a "somewhat useful tool." Only 7 percent said it was not useful. Not surprisingly, these Governors (92 percent) said that they thought that the President should be given line-item veto authority over spending. The support was bipartisan--88 percent of Democratic respondents, including President Clinton, agreed that the President should be given this authority.

In the past decade several line-item veto legislative proposals have reached the Senate floor. The bill before us builds on several of those previous proposals. The core element of the bill is the requirement that separate spending line-items, targeted tax expenditures, and new direct spending items be separately enrolled. Currently, the President is presented with bills containing an outline of spending, with the hundreds or thousands of details hidden in their committee reports. Under separate enrollment procedures, the President will be presented with an individual bill for each of those details. Thus, the ability to veto wasteful spending without simultaneously vetoing critically important spending will be restored as originally intended by the Framers of the Constitution. Spending items covered by S. 4 will be listed as completely in bills as they are in committee reports. Once a bill with covered items passes, those items will be separately enrolled as new bills, will be voted on en bloc by Congress, and will each be subject to a veto. It will require a two-thirds majority vote of each House to override a veto of a spending item.

The items covered by S. 4 will be discretionary appropriations, new direct spending (generally entitlements), and targeted tax expenditures. In years past the focus has been only on discretionary appropriations, but a consensus has gradually developed in Congress that this focus is too narrow. Tax expenditures can be used to give special treatment to individuals or groups that in no way serve any national interest. Though some Senators may find it odd to say that passing a law allowing some Americans to keep more of their money instead of paying taxes is an "expenditure" by the Government, the fact remains that the budgetary result is the same as if the Government gave cash instead of a tax break. S. 4 will cover tax breaks that are not intended for a national purpose; other tax expenditures, such as for health care, small business, energy development, etcetera will generally not be covered. The change to cover new direct spending is even more important. The primary cause of our budgetary difficulties is such spending, which is growing uncontrollably. With entitlements causing our budgetary problems, and with them consuming an ever larger share of the budget, we are very pleased that the President will be given the authority to veto individual new entitlement proposals.

During debate on this bill several improvements have been made. For example, an amendment was adopted that will guarantee that any savings from vetoes will be used to reduce the deficit instead of spent. Another improvement, which should lessen concerns regarding the constitutionality of S. 4, was the adoption of the requirement that Congress vote on separately enrolled bills before presenting them to the President. A third change that should be noted was the clarification that this bill applies only to spending items; rescissions, fencing language, and the like will not be separately enrolled.

Several arguments have been raised against S. 4, none of which has merit. First, some Senators have argued that it will transfer too much power to the Executive Branch. We agree that S. 4 will transfer power, but, as discussed above, we believe that this transfer will restore the balance of power between the Executive and Legislative Branches as it existed before it was upset by the gradual increase in the size of bills and by the elimination of impoundment authority.

Some Senators have also argued that giving the President this power will be unwise because he will not be able to absorb the detail in all the bills. We simply do not share our colleagues' concern that present and future Presidents will lack the competency to judge the value of line-item spending proposals. Past Presidents had no difficulty in identifying funds for impoundment, and future

Presidents should have no difficulty in wielding the line-item veto.

The next charge against S. 4 is that it will be used by the President to coerce individual Members. We emphatically disagree. If a President were to succumb to this behavior, we think Congress, the press, public opinion, and ultimately the voters would exact retribution. Presidents will understand this fact and will consequently not succumb to the temptation to misuse this authority.

The next argument that has been raised against S. 4 is that it will be unworkable. Obviously it will make the appropriations process a little more difficult, but charges of unworkability are grossly inflated. Properly exercised, the line-item veto authority in this bill will result in billions of dollars in savings, all of which will be used to reduce the deficit. The price of these savings will be that the President, President pro tempore, and the Speaker of the House will have to sign their names on each of the thousands of separately enrolled bills instead of on just a couple of dozen bills each year, and the enrolling clerk will be a bit busier (in a trial run, it took the clerk 4 hours to enroll the line items in one of last year's appropriations bills; in sum, the clerk will have to work about 50 more hours per year). Each couple of dozen pages of an appropriations bill will be transformed into a couple-of-inches-thick stack of bills. A semi-trailer will not be needed to haul the 13 regular appropriations bills so transformed to the President, as some Senators have expansively suggested--a child's little red wagon will do the trick.

The final argument raised against S. 4 is that it is unconstitutional. While a few experts have been dug up to advance this claim (as experts can be found to take any position imaginable on any given issue) these experts are in the minority. Not only conservative constitutional scholars, but nonpartisan experts like the Congressional Research Service and ultra-liberal commentators like Laurence Tribe have concluded that S. 4 is constitutional.

When S. 4. is put into effect, Members will be less inclined to slip unjustified, special interest items into the fine print of appropriations and tax bills. The old practice of "log rolling" (agreeing to support another Member's pork in return for that Member agreeing to support one's own pork) will become a nearly extinct practice. In the hands of a President who is committed to eliminating wasteful spending, it will prove to be an indispensable tool. In prior years, those of us who are Republicans were often accused of only favoring passage of line-item veto authority because there was a Republican President. We are happy now to prove that accusation wrong. We are delighted to give President Clinton, a Democrat, this authority, and we and the voters will hold him accountable for its proper and diligent exercise.

#### **Those opposing final passage contended:**

##### **Argument 1:**

True conservatives should violently oppose final passage of S. 4. It is one of the most dangerous pieces of legislation ever considered by Congress. S. 4 will strike at the very heart of our form of representative government by transferring an enormous amount of legislative power from the Congress to the President. Millennia of experience have demonstrated that the power of the purse, to raise and spend money, is the greatest power of government, and that the strength of any democracy can be measured by how closely this power has been tied to the people's branch of the government, the legislature. In our federal system of government especially it is important to maintain legislative control over the purse. Failing to do so will undermine our country.

If this bill becomes law, the President will have sweeping new powers. With a few signatures and the support of only one-third of either body of Congress, he will be able to eliminate funding for projects, programs, agencies, and even departments authorized and enacted by Congress. President Clinton will probably target defense, eliminating funding for ballistic missile defenses and other initiatives. President Reagan, if he had been given this power, would have probably exercised it by eliminating the Department of Education and the Department of Energy, both of which he proposed doing away with. Welfare, highways, housing, nutrition, environment, NASA, and anything else the Federal Government spends money on could be canceled by the President with the acquiescence of one-third of the Members of either body. Nothing in this bill will limit the President to cutting so-called pork--he will be able to cut any line item of spending. The transfer of power will be absolutely enormous.

Our reason for fearing this transfer goes well beyond any narrow parochial concerns over projects in our particular States. In all candor, we do not have any particular reason to believe that our current President is likely to make great use of this power, nor do we believe that he will misuse it as a weapon against Senators with whom he has policy disagreements. It is Congress' willing abnegation of this power that we fear. The Framers of our Constitution were students of history. They were well versed in the decline of the Roman Empire. They knew that the decline was traceable to the Roman Senate's willing cession of its powers to the Emperor, and that the end result was tyranny. Our Founding Fathers also were well versed in the rise of modern democratic governments. They knew that the development of democracy in England paralleled the gradual control asserted by Parliament over the purse.

Consequently, the power of the purse was directly vested in Congress. Members of Congress were given the sole responsibility for raising revenue and determining spending. After considering and amending bills and resolutions, they were to be submitted to the President for his signature or his veto. The President was not to be involved in the legislative process beyond either approving or disapproving the end result. A primary reason for granting the President a veto on legislation was to serve as a check on Congress passing legislation that may serve narrow interests but not the broader national interest. The Framers feared a concentration of power. It was preferable to have the greatest power of government in the hands of the most diffuse, most accountable branch, but allowing

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that power to be totally free in its exercise also invited abuse. The President's veto authority was to give him some ability to block legislation. It was not, however, intended to involve him in its formulation.

An additional reason for vesting the power of the purse in Congress was because Members represent individual States and districts as well as the Nation. The United States is a union of States; giving Congress this power has helped ensure that individual States' interests have not been drowned out by national or regional concerns. The Senate, in particular, was created to protect the interests of the States. Without the Senate, more populous States would be able to exercise total dominance over smaller States.

This bill before us will destroy this constitutional structure by giving the President the right to pick and choose among the pieces of a law, selectively vetoing some parts and passing others. However, a piece of a law is not a law. The give and take of the legislative process forms legislation into a cohesive whole--some parts may be extraneous, but Members never vote on any bill as an amalgamation of line items. Taking the defense appropriations bill as an example, Members consider the merits of individual line items, but they also balance those items against each other, making sure that their priorities for balancing force structure, readiness, procurement, etcetera are reflected in the totals for particular sections of line items. Breaking such a bill into hundreds of pieces would render it meaningless, and would serve as an open invitation for the President to use his veto pen to change congressional priorities. Thus, this bill will allow the President to do more than veto--it will allow him to legislate.

Congress is giving the President this tremendous legislative authority in an exercise of self-flagellation. Some Senators have claimed that individual line items and tax expenditures are often passed that are little more than raids on the Treasury for narrow special interests. These so-called porkbarrel line items, even by their admission, make up a small part of the tax and spending bills passed by Congress. They then claim that this spending is partially responsible for the massive debt that has accumulated in the last 15 years, and have concluded that Congress is incapable of restraining itself from passing such line items. It is this analysis, and the readiness with which it has been received by the American public, which disturbs us. The debt is the result of aberrant policy decisions pushed by then-President Ronald Reagan in the 1980's, and acquiesced in by Congress. So-called porkbarrel spending did not cause the debt, and is not causing deficit spending today. Nevertheless, the perception is that Congress is to blame, and the cry is to strip power from it and give it to the President. Just as in the Roman Senate, Senators today are leading the chorus.

There is no sense in belaboring the point. The die is cast. A majority of Members will listen to neither the voice of reason nor the voice of experience. They are convinced that Congress is to blame for excessive spending, and their solution is to give the President the power to reorder spending priorities. We cannot stop this mindless juggernaut against our Republic, but we can cast our lonely votes in opposition.

#### Argument 2:

We support passage of a line-item veto bill but we firmly oppose passage of this particular bill. Numerous improvements to S. 4 have been made over the course of this week's debate, but it remains irredeemably flawed. It is unconstitutional, unworkable, and will transfer too much power to the President.

Supporters of this legislation are to be commended for carefully considering and accepting many of the amendments that were offered to S. 4 during debate. Too often, a bill's supporters will not entertain any suggestions of further refinement once their bill reaches the Senate floor. In this case, all amendments were seriously weighed, and as a result many improvements have been made. These improvements, however, do not begin to outweigh the bill's flaws.

First among these flaws is that it is blatantly unconstitutional. Separate enrollment simply cannot pass constitutional muster. Article I, section 7 of the Constitution states that "Every bill which shall have passed the House of Representatives and the Senate shall, before it becomes a law, be presented to the President . . ." The Constitution does not provide that laws, having passed both bodies, will be smashed into shards by an unelected official, that those shards will then be voted on en bloc, and that each shard will then be presented to the President for his signature.

The next major flaw with the separate enrollment approach is that it is unworkable. The Appropriations Committee has informed us that last year, if this bill had been in effect, Congress would have enacted 9,625 regular appropriations bills instead of the usual 13, because 9,625 is the number of line items that were in last year's appropriations bills. Every one of those bills would have had to have been signed by the President pro tempore, the Speaker of the House, and the President. For each of those bills that the President instead vetoed, Congress would have needed to muster two-thirds majority votes to override his veto. This procedure is manifestly cumbersome, and will undoubtedly lead to great delays and disputes over how items have been enrolled.

Finally, the need to muster a two-thirds majority vote to override a presidential veto of a line item bill will also result in too great a transfer of power to the President. We agree that Congress has fallen into the shoddy practice of hiding unjustifiable spending items in monolithic appropriations bills. However, not all line items, and in fact most line items, are justified and are passed by Congress because Congress approves of them. These line items reinforce each other; Congress intends for them to be considered together and voted on together. Individual elements may receive less than two-thirds of Members' support by themselves, but when weighed with other elements they will receive more than two-thirds support. Requiring two-thirds majority votes on individual line items in order to override a presidential veto is thus unjustified, because the true support for those line items may not materialize when they are taken out of context. This problem could have been avoided if our colleagues had accepted the enhanced recession approach in S.

14, which would have only required simple majority votes to agree to a President's proposed recessions on a bill.

Unfortunately, the separate enrollment approach to the line-item veto was taken instead. As a result, the Senate is about to vote on, and probably pass, an unconstitutional, unworkable transfer of power to the President. Thankfully, S. 4 contains a sunset clause, so in a few years we will have an opportunity to revisit this issue and get it right.